Circleville Metal Workers, Inc. and David N. Boyer, Petitioner and District Lodge 52 of the International Association of Machinists and Aerospace Workers, AFL-CIO. Case 9-RD-1056

May 3, 1983

DECISION AND CERTIFICATION OF REPRESENTATIVE

MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

Pursuant to a Stipulation Upon Consent Election an election by secret ballot was conducted on February 25, 1982, under the direction and supervision of the Regional Director for Region 9 in the unit described below. At the conclusion of the election the parties were furnished a tally of ballots which showed that, of approximately 58 eligible voters, 28 cast votes for, and 27 against, the Union. There were no challenged ballots. Thereafter, the Employer filed timely objections to the election.

On March 29, 1982, the Regional Director issued his Report on Objections to Election and Recommendations to the Board in which he found that a fatal procedural defect occurred in connection with the election, and, in addition, recommended that Objections 1 and 2 be sustained and that a rerun election be directed. Thereafter, the Union filed timely exceptions to the Regional Director's report and a supporting brief. The Employer filed a reply brief to the Union's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

With respect to the procedural defect the Regional Director found that "[i]nasmuch as the name of the recognized bargaining agent and party to the applicable contract [i.e., Local Lodge No. 55, hereinafter Lodge 55] did not appear on the ballot . . . the election must be declared a nullity and rerun." We disagree with this conclusion. The record indicates that on November 28, 1978, District Lodge 52 of the International Association of Machinists and Aerospace Workers, AFL-CIO (hereinafter District Lodge 52), was certified as the collectivebargaining representative of the Employer's employees in a unit of all production and maintenance employees employed at the Employer's machine shop and welding shop located at 305 Logan Street, Circleville, Ohio, including hourly truckdrivers, welders, grinders, machinists, machine operators, laborers, shipping and receiving personnel and janitors. Thereafter, the unit employees were placed by District Lodge 52 into Lodge 55, a local of District Lodge 52. On April 27, 1979, Lodge 55

and the Employer signed a collective-bargaining agreement covering the unit employees retroactive to April 5, 1979, through April 5, 1982. This agreement included a modified union-shop provision that provided, in part, that unit employees shall pay dues to Lodge 55. Based on the foregoing, the Regional Director concluded that Lodge 55 had supplanted District Lodge 52 as the collective-bargaining representative of the unit employees. He further found that, although the Petitioner filed a petition to decertify Lodge 55, the stipulation executed by the parties did not include the name of Lodge 55 and Lodge 55 did not appear on the ballot. (The question presented was whether the unit employee wished to be represented by District Lodge 52.) The Regional Director then concluded that the election must be set aside because the employees were not afforded an opportunity to vote on whether they wanted Lodge 55 as their bargaining representative.

We find that the facts do not support the Regional Director's conclusion. District Lodge 52 was certified by the Board as the bargaining representative of the unit employees and there is no evidence that it disclaimed its role or transferred the responsibility to Lodge 55. Nor did any party assert a disclaimer of interest by District Lodge 52 or the supplanting of District Lodge 52 by Lodge 55, prior to the hearing. Further, the Regional Director erroneously stated that the Petitioner filed a petition seeking to decertify Lodge 55. In fact, the petition lists the bargaining representative as "International Association of Machinists and Aerospace Workers Dist. No. 52 Lodge No. 55." In these circumstances, we do not believe that the appearance of the name Lodge 55 on the collectivebargaining agreement and decertification petition is sufficient evidence to support the extreme conclusion that District Lodge 52 has been supplanted as bargaining representative. Accordingly, we find that the failure to place Lodge 55 on the ballot did not invalidate the election. In this regard, the cases cited by the Regional Director are inapposite. Armstrong Rubber Co., 208 NLRB 513 (1974), involved a decertification petition which posed the problem as to whether the certified unit sought was coextensive with the existing collective-bargaining unit. The Board dismissed the petition on the ground that the certified unit sought had been merged into the broader recognized contractual unit. This issue is not present here. Acoustical Services, 222 NLRB 1009 (1976), presented a situation where the em-

¹ According to the exhibits submitted with the Union's exceptions, the signatory to the collective-bargaining agreement was International Association of Machinists and Aerospace Workers, District No. 52, Lodge No. 55.

ployer initially assigned its bargaining rights with a local union to a multiemployer association which bargained with the union's district council comprised of three local unions, including the local with which the employer was obligated to bargain. It was therefore uncertain whether the local union or the district council was the bargaining representative. In such circumstances the Board placed the names of the local and the district council on the ballot. No such delegation of bargaining authority has occurred here which could create such an ambiguity regarding the identity of the bargaining representative.

Employer's Objections 1 and 2 allege that, prior to the election and during the critical period, the Union (District Lodge 52), by promises that membership dues would be reduced if a majority of the employees voted in favor of such representation, coerced employees in their rights to refrain from union activities by inducing them to vote in favor of union representation. The Regional Director found that, under the International Union's constitution, to which all locals are subject, locals are permitted to choose one of two alternative methods of computing dues: either two times the average hourly rate of members in a particular shop or two times the average hourly rate of all members. Lodge 55 dues were computed according to the latter method. A short time before the election, in response to a question about dues. District Lodge 52 informed the employees that, as soon as the decertification election was over, they would be given an opportunity to decide themselves whether to remain in Lodge 55 or to transfer to another local (of the District) which used a different method of computing dues. It was pointed out that transferring to a local which computes dues based on the average hourly rate of the employees in the shop could result in dues as low as \$14.01 per month as compared with Lodge 55's monthly dues of \$19.30 a month. Thus, individually the employees could realize a savings of \$63.48 per year. Citing NLRB v. Savair Mfg Co., 414 U.S. 270 (1973), and Loubella Extendables, 206 NLRB 183 (1973), the Regional Director concluded that District Lodge 52's statement was in effect a promise to benefit the employees if they voted for the Union. Accordingly, he sustained the Employer's Objections 1 and 2 and recommended that the election be set aside. We do not agree.

In response to questions concerning dues, District Lodge 52 told employees about the two methods of computing membership dues set forth in the International Union's constitution, and indicated that they could vote to join a local union using the other method after the election. We do not think

this rises to the level of activity that the Court found objectionable in Savair. There, the Supreme Court found that a union's promise to waive or reduce initiation fees for employees who join a union prior to an election was grounds for setting aside an election. Similarly, in Loubella Extendables, the Board found that an incumbent union's promise made at a meeting 3 days before a decertification election that if it won the election it would waive the initiation fees and delinquent dues owed by four newly hired employees constituted a grant of financial benefit and warranted setting aside the election. In this case, unlike Savair and Loubella, the opportunity to change locals was available to all the unit employees and was not a benefit either limited to those who supported the Union prior to the election or promised to a select group. Further, the realization of the so-called benefit here is at best tenuous. Not only would it be necessary that the employees vote for continued representation by District Lodge 52 but should that union be selected it would then be necessary that a majority of the unit employees vote in favor of changing locals. In short, we find that District Lodge 52's statement with respect to changing locals was neither directed to a select group of the employees nor was it a promise of an economic benefit to induce a vote in its favor. Instead, it was an explanation of the procedure for effecting a change of local. Accordingly, we overrule Employer's Objections 1 and 2.

As we have overruled the Regional Director's procedural issue finding and the Employer's objections, and as the tally of ballots shows that the Union has obtained a majority of the valid ballots cast, we shall certify it as the collective-bargaining representative of the employees in the appropriate unit.

CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid ballots have been cast for District Lodge 52 of the International Association of Machinists and Aerospace Workers, AFL-CIO, and that, pursuant to Section 9(a) of the National Labor Relations Act, as amended, the said labor organization is the exclusive representative of all the employees in the following appropriate unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, or other terms and conditions of employment:

All production and maintenance employees employed by the Employer at its 305 Logan Street, Circleville, Ohio machine shop and welding shop, including all hourly truck drivers, welders, grinders, machinists, machine operators, laborers, shipping and receiving personnel and janitors; but excluding all office

clerical employees, professional employees, guards and supervisors as defined in the Act.